



Signed and Filed: October 30, 2020

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re )  
 ) Bankruptcy Case No. 08-30119  
PETER R. FADER, )  
 ) Chapter 7  
 )  
Debtor. )  
 )  
 )  
E. LYNN SCHOENMANN, TRUSTEE ) Adversary Case No. 20-03007  
 )  
Plaintiff, )  
 )  
v. )  
 )  
STEVEN R. BOAL and QUOTIENT )  
TECHNOLOGY, INC., )  
 )  
Defendants. )  
 )

**MEMORANDUM DECISION REGARDING MOTIONS TO DISMISS**

On September 4, 2020, this court held a hearing on the motions to dismiss this adversary proceeding filed by defendants Steven R. Boal ("Boal") (dkt. 28) and by Quotient Technology, Inc. ("Quotient") (dkt. 56) (collectively, "Defendants"). For the reasons set forth below, the court is denying Boal's motion to dismiss but granting Quotient's motion to dismiss.

1 **I. PROCEDURAL BACKGROUND**

2 On January 26, 2008, debtor Peter R. Fader ("Debtor") filed  
3 the underlying chapter 7 case (Case No. 08-30119). Debtor  
4 received his discharge in July 2009, and the case was closed in  
5 2010. On July 24, 2019, Debtor filed a motion to reopen the  
6 case so that a chapter 7 trustee could determine whether the  
7 estate could or should pursue certain claims against Boal and  
8 Quotient. The court granted the motion and appointed plaintiff  
9 E. Lynn Schoenmann ("Trustee") as the chapter 7 trustee.

10 On December 10, 2019, Trustee filed the underlying  
11 complaint against the Defendants in state court, and Boal  
12 removed the action to the U.S. District Court for the Northern  
13 District of California ("District Court"). Following a referral  
14 of the action to this court by the District Court, Boal filed a  
15 motion to withdraw the reference under 28 U.S.C. § 157(d), which  
16 the District Court denied.

17 On January 30, 2020, Boal filed his motion to dismiss  
18 Trustee's Complaint (the "Boal MTD") (dkt. 28). Quotient then  
19 filed its own motion to dismiss (dkt. 56) (the "Quotient MTD"),  
20 which Boal joined on the same day (dkt. 60). On August 3, 2020,  
21 Trustee filed her oppositions to both motions to dismiss; both  
22 Quotient (dkt. 65) and Boal (dkt. 66) filed their replies on  
23 August 4, 2020. Following a telephonic hearing on September 4,  
24 2020, the court took both the Boal MTD and the Quotient MTD  
25 under submission.

26 **II. ALLEGATIONS AND CLAIMS ASSERTED BY TRUSTEE**

27 Trustee's complaint alleges that in exchange for Debtor's  
28 assistance in raising critical capital for two companies, Boal

1 promised that he would pay Debtor a share of his profits.  
2 "Specifically, Boal agreed that [Debtor] would receive 30% of  
3 the stock issued to Boal in [Quotient] and 50% of the stock  
4 issued to Boal in CashStar, Inc.("CashStar")." Complaint at ¶  
5 1. Both payments were to occur after Boal liquidated his  
6 shares. *Id.*

7 Trustee further alleges that Debtor raised critical capital  
8 for both Quotient and CashStar, including over \$40 million for  
9 Quotient between 1999 and 2006, "money that was critical to the  
10 company's early survival and later success[.]" Complaint at  
11 ¶¶ 2 and 18. Trustee asserts that Boal and Debtor formed their  
12 first joint venture in 1998 and "had always operated on a  
13 'handshake basis.'" Complaint at ¶ 16.

14 In the following paragraph, Trustee alleges that Boal  
15 committed "on behalf of himself and Quotient" to give Debtor 25  
16 to 30% of Boal's equity in Quotient. "Boal wanted to maintain  
17 control, so the two agreed that the equity representing  
18 [Debtor's] promised return would be issued to Boal who would  
19 hold it in trust" and would pay Debtor his share of the proceeds  
20 upon a sale of the equity. Complaint at ¶ 17.

21 In her first cause of action, Trustee alleges breach of the  
22 "Quotient Contract." In paragraph 31, she alleges that Boal,  
23 acting on behalf of himself and Quotient, entered into an oral  
24 contract with Debtor. Complaint at ¶ 31. Trustee states that  
25 Boal agreed that Quotient would issue shares to Boal on Debtor's  
26 behalf, who would hold the stock for long as he deemed  
27 appropriate and then pay Debtor 30% of the sale of the stock.  
28

1 "In short, the parties agreed that as Boal liquidated shares of  
2 Quotient stock issued to him, he would pay 30% of the proceeds  
3 to [Debtor]." *Id.* "Quotient and Boal breached the Quotient  
4 Contract by paying [Debtor] only \$600,000 (in the form of two  
5 promissory notes Boal promised to forgive) rather than the full  
6 amount due, which on information and belief exceeds \$10  
7 million." *Id.* at ¶ 35.

8 In the second cause of action, Trustee asserts a claim  
9 against Boal and Quotient for breach of fiduciary duties arising  
10 out of "a joint venture or a relationship akin to a joint  
11 venture[.]" In the third cause of action, Trustee asserts  
12 claims against Boal for the purported breach of the CashStar  
13 contract. In the fourth cause of action, Trustee asserts that  
14 Boal breached his fiduciary duties to Debtor arising from the  
15 "CashStar Joint Venture." In the fifth, sixth and seventh  
16 causes of action, Trustee seeks the imposition of a constructive  
17 trustee against Boal and Quotient, declaratory relief and an  
18 accounting.

### 19 **III. THE MOTIONS TO DISMISS**

20 The Boal MTD seeks dismissal of the complaint on four  
21 grounds. First, Boal contends that Debtor's failure to schedule  
22 the potential claims against him in the underlying bankruptcy  
23 case judicially estops the estate (and Debtor, as the primary  
24 beneficiary of potential proceeds of this lawsuit) from  
25 asserting or benefitting from these claims. Second, Boal  
26 contends that the breach of oral contract claims are time-barred  
27 under California law. Third, Boal argues that even if judicial  
28 estoppel does not apply, the complaint fails to state a claim

1 for breach of fiduciary duty upon which relief can be granted.  
2 Fourth, Boal argues that the remaining claims are wholly  
3 derivative of the time-barred breach of contract claims and thus  
4 do not assert claims upon which relief can be granted.

5 The Quotient MTD contends that the terms of the purported  
6 contract are too vague to be enforceable. Second, Quotient  
7 observes that Trustee has not alleged that Quotient (as opposed  
8 to Boal) breached the purported oral contract. Third, Quotient  
9 contends that the breach of contract claims are time-barred  
10 under California law. Fourth, Quotient contends that Trustee's  
11 breach of fiduciary duty claims are not cognizable as Debtor and  
12 Quotient never entered into a partnership or joint venture.  
13 Fifth, like Boal, Quotient argues that the remaining causes of  
14 action fail to state a claim under California law or are wholly  
15 derivative of other claims that must be dismissed. Finally,  
16 Quotient contends that the doctrine of judicial estoppel  
17 precludes Debtor (and, by extension, Trustee) from asserting or  
18 benefitting from the claims pled by the Trustee.

19 **IV. STANDARDS FOR DISMISSAL OF COMPLAINTS**

20 A motion to dismiss pursuant to Federal Rule of Civil  
21 Procedure 12(b)(6) (made applicable by Federal Rule of  
22 Bankruptcy Procedure 7012) is a challenge to the sufficiency of  
23 the allegations set forth in the complaint. To survive a Rule  
24 12(b)(6) motion to dismiss, a plaintiff must allege "enough  
25 facts to state a claim to relief that is plausible on its face."  
26 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim  
27 has facial plausibility when the Plaintiff pleads factual  
28 content that allows the court to draw the reasonable inference

1 that the defendant is liable for the misconduct alleged."  
2 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility  
3 standard is not akin to a 'probability requirement,' but it asks  
4 for more than a sheer possibility that a defendant has acted  
5 unlawfully." *Id.* (quoting *Twombly*) "While a complaint attacked  
6 by a Rule 12(b)(6) motion to dismiss does not need detailed  
7 factual allegations, a plaintiff's obligation to provide the  
8 'grounds' of his 'entitlement to relief' requires more than  
9 labels and conclusions." *Twombly*, 550 U.S. at 555.

10 **V. DISCUSSION**

11 **A. BOAL'S MTD**

12 **1. *Judicial Estoppel***

13 Boal argues that the doctrine of judicial estoppel  
14 precludes this adversary proceeding, particularly as Debtor is  
15 the primary beneficiary of any judgment. When Debtor filed this  
16 case in 2008, he admittedly did not schedule the purported oral  
17 contract with Boal on his schedules. See ¶¶ 4-7 of Debtor's Ex  
18 Parte Motion to Reopen Chapter 7 Case (dkt. 41 in Case No. 08-  
19 30119). He did not disclose that pursuant to this oral  
20 contract, he would allegedly receive 25 to 30 percent of the  
21 equity in Quotient, as well as stock in CashStar. *Id.*; see also  
22 ¶¶ 16-19 of the Complaint (dkt. 1-3).

23 After the court reopened the case, Trustee filed a motion  
24 to approve the litigation recovery agreement with Debtor (dkt.  
25 55 in Case No. 08-30119). Boal objected (dkt. 62 in Case No.  
26 08-30119), contending that the litigation sharing agreement was  
27 inequitable and designed to evade the doctrine of judicial  
28 estoppel. Overruling Boal's objections, the court entered an

1 order approving the litigation recovery agreement (dkt. 72) and  
2 will not revisit that holding in the context of the two motions  
3 to dismiss.

4           2.   *Statute of Limitations*

5           Under California law, the statute of limitations based on a  
6 breach of oral contract is two years. Cal. Civ Proc. Code  
7 § 339(1). Boal contends that any breach of the purported  
8 Quotient agreement accrued in 2014 when the company went public  
9 and Boal sold some of his Quotient shares, although he  
10 acknowledges that he continued to sell Quotient shares through  
11 2016. See Boal MTD at dkt. 28, ECF pgs. 17-18. Similarly, Boal  
12 contends that the statute of limitations bars Trustee's claims  
13 regarding the CashStar stock, as the Complaint alleges that Boal  
14 sold his CashStar stock in 2017, but gave Debtor only a "small  
15 fraction" of the earnings to which he was entitled.

16           In response to Boal's contention that her claims are time-  
17 barred, Trustee asserts that Debtor and Boal orally agreed to  
18 extend the payment dates to December 2018, thus equitably  
19 estopping Boal's invocation of the statute of limitations. This  
20 defense presents an issue of fact that cannot be resolved in the  
21 context of a motion to dismiss.

22           Under California law, a party may be equitably estopped  
23 from asserting the statute of limitations when his or her  
24 conduct induced another not to file a lawsuit within the  
25 applicable limitations period. *Walker v. City of San Clemente*,  
26 239 Cal.App.4th 1350, 1370 (2015); see also *Atwater Elementary*  
27 *School Dist. v. California Dept. of General Services*, 41 Cal.4th  
28 227, 232-233 (2007)("[w]here the delay in commencing action is

1 induced by the conduct of the defendant it cannot be availed of  
2 by him as a defense"). As stated by the court in *Battuello v.*  
3 *Battuello*, 64 Cal.App.4th 842 at 844, 848 (1998) (emphasis  
4 added):

5 While section 366.2 clearly states that the one-year  
6 statute of limitations set forth therein may not be  
7 "tolled" or "extended," it says nothing about  
8 equitable estoppel. The doctrines are distinct. As  
9 one court noted in a similar context, "Tolling,  
10 strictly speaking, is concerned with the point at  
11 which the limitations period begins to run and with  
12 the circumstances in which the running of the  
13 limitations period may be suspended. These are  
14 matters in large measure governed by \*\* the language  
15 of the statute of limitations itself.... Equitable  
16 estoppel, however, is a different matter. It is not  
17 concerned with the running and suspension of the  
18 limitations period, but rather comes into play only  
19 after the limitations period has run and addresses  
20 itself to the circumstances in which a party will be  
21 estopped from asserting the statute of limitations  
22 as a defense to an admittedly untimely action  
23 because his conduct has induced another into  
24 forbearing suit within the applicable limitations  
25 period. Its application is wholly independent of the  
26 limitations period itself and takes its life, not  
27 from the language of the statute, but from the  
28 equitable principle that no man will be permitted to  
profit from his own wrongdoing in a court of  
justice. Thus, because equitable estoppel operates  
directly on the defendant without abrogating the  
running of the limitations period as provided by  
statute, it might apply no matter how unequivocally  
the applicable limitations period is expressed.

24 For the reasons set forth in *Battuello*, Trustee's allegations  
25 that Boal induced Debtor not to file a lawsuit before the end of  
26 the applicable limitations period by making false promises upon  
27 which Debtor purportedly relied preclude dismissal of the claims  
28 against Boal at this juncture. *Id.*, see also *Herman v. Brown*,



1 91 Cal.App.2d 758, 761 ((1949) ("a debtor who induces his  
2 creditor to defer action, by means of promises to pay the  
3 indebtedness or settle the claim, is estopped to plead the  
4 statute of limitations") (internal quotations omitted). The  
5 court must assume the facts alleged in the complaint are true,  
6 and Trustee has alleged sufficient facts to preclude dismissal  
7 of her action against Boal as time-barred.

8           3.    *Breach of Fiduciary Duties and Contract*

9           Boal also asserts that Trustee's claims for breach of  
10 fiduciary duty should be dismissed. The court believes that  
11 dismissal is inappropriate, as Trustee has alleged that Boal and  
12 Debtor entered into a joint venture and because California law  
13 provides that "a joint venturer owes fiduciary duties to his  
14 coventurers." *Prostar Wireless Grp., LLC v. Domino's Pizza,*  
15 *Inc.*, 360 F. Supp. 3d 994, 1008 (N.D. Cal. 2018), *aff'd*, 815 F.  
16 App'x 117 (9th Cir. 2020), *citing Galardi v. State Bar*, 43  
17 Cal.3d 683, 691 (1987). Thus Trustee has sufficiently alleged  
18 this cause of action against Boal.

19           Boal further contends that that any alleged agreement  
20 between Debtor, Boal and Quotient is unenforceable because it is  
21 "uncertain and indefinite as to the obligations of the parties,"  
22 *citing Kahn Creative Partners, Inc. v. Nth Degree, Inc.*, No. CV  
23 10-932-JST FFMX, 2011 WL 1195680, at \*4 (C.D. Cal. Mar. 29,  
24 2011). But *Creative Partners* actually explains why dismissal is  
25 premature: "Whether a partnership or joint venture exists is  
26 primarily a factual question to be determined by the trier of  
27 fact from the evidence and inferences to be drawn therefrom."  
28 *Id.* at \*6, *citing Bank of Cal. v. Connolly*, 36 Cal.App.3d 350,

1 111 Cal.Rptr. 468, 478 (Cal. Ct. App. 1973). "Although a  
2 partnership ordinarily involves a continuing business, whereas a  
3 joint venture is usually formed for a specific transaction or a  
4 single series of transactions, the incidents of both  
5 relationships are the same in all essential respects." *Connolly*,  
6 111 Cal.Rptr. at 477.

7 While Trustee does not describe certain terms of the  
8 purported joint ventures, this lack of detail is not necessarily  
9 fatal at the pleading stage; instead, the parties should be able  
10 to conduct discovery, and file motions for summary judgment if  
11 appropriate (as the parties in *Kahn Creative Partners* did).

12 Nonetheless, Trustee will have to address the following material  
13 questions at some point to avoid possible summary judgment:

14 When and where was the agreement between Debtor and Boal  
15 reached? What were the specific terms? Was there a minimum  
16 amount of capital that had to be raised? Was there a time frame  
17 for performance?

#### 18 4. *Remaining Claims*

19 Boal argues that the remaining claims are wholly derivative  
20 of the purportedly time-barred claims and thus no relief can be  
21 granted on them. As noted above, however, Trustee has  
22 sufficiently alleged a cognizable claim for breach of contract,  
23 so the remaining claims are not subject to dismissal.

#### 24 **B. QUOTIENT'S MTD**

25 In contrast to the claims against Boal, the claims against  
26 Quotient do not survive scrutiny under *Iqbal* and *Twombly*.  
27 Trustee's complaint insufficiently alleges that Debtor entered  
28 into an oral agreement with Quotient. The complaint is devoid

1 of factual allegations reflecting when and where Debtor reached  
2 an agreement with Quotient, or any specific promises made by  
3 Debtor to Quotient or by Quotient to Debtor. Quite simply, the  
4 complaint does not plausibly allege any duties owed by Quotient  
5 to Debtor or any resulting breaches of such duties. For this  
6 reason, the court will dismiss the claims asserted against  
7 Quotient. Ordinarily, the court would dismiss the claims with  
8 leave to amend, but - as discussed below - any such claims are  
9 time-barred.

10 According to paragraph 1 of the complaint, "Boal agreed  
11 that [Debtor] would receive 30% of the stock issued to Boal in  
12 [Quotient] and 50% of stock issued to Boal in CashStar, Inc."  
13 Complaint at ¶ 1. Such payment was to occur after Boal  
14 liquidated his shares. *Id.* Boal liquidated over 62,000 of his  
15 Quotient shares in 2014 when Quotient went public, but did not  
16 remit the proceeds to Debtor. Under governing California law,  
17 any action for this purported breach of the oral agreement  
18 between Debtor and Boal accrued at the time of the breach in  
19 2014. *Zecos v. Nicholas-Applegate Capital Mgmt.*, 42 Fed. App'x  
20 31, 32 (9th Cir. 2002) (citing *Cochran v. Cochran*, 56 Cal. App.  
21 4th 1115, 1121 (1997)). The statute of limitations for breach  
22 of an oral contract is two years pursuant to section 339(1) of  
23 the California Code of Civil Procedure.

24 Therefore, under Cal. Civ. Pro. § 339(a), Debtor's claims  
25 expired in 2016 and were time-barred when Trustee filed the  
26 underlying complaint in 2019. As noted above in section V(A)(2)  
27 above, the Trustee sufficiently alleges facts that could support  
28

1 a finding that Boal is equitably estopped from asserting a  
2 statute of limitations defense. In contrast, Trustee has not  
3 alleged that Quotient was a party to any such agreement or  
4 novation, nor has she alleged any promises made by Quotient that  
5 would support equitable estoppel of its statute of limitations  
6 defense. As admitted by Trustee in her consolidated opposition  
7 and as stated in paragraph 32 of the Complaint, Debtor and Boal  
8 "agreed to amend the Quotient Contract to allow Boal to defer  
9 payment of what was due to [Debtor]. As a result of this  
10 novation, the payments were not due until [Debtor's] demand for  
11 them in or about December 2018." Given that Quotient was not a  
12 party to this novation, the two-year statute of limitations  
13 still applies as to claims against Quotient.

14 Finally, even if the claims against Quotient were not time-  
15 barred, Trustee has not identified any promise made to Debtor by  
16 Quotient that it has breached. As a consequence, any argument  
17 that Quotient should be equitably estopped from asserting a  
18 statute of limitations defense is not persuasive. For the  
19 foregoing reasons, the court will dismiss the Trustee's claims  
20 against Quotient without leave to amend.

21 **VI. CONCLUSION**

22 For the foregoing reasons, the court is denying the Boal  
23 MTD and granting the Quotient MTD. Trustee should upload an  
24 order denying the Boal MTD for the reasons set forth in this  
25 memorandum decision and file a separate proof of service  
26 indicating compliance with B.L.R. 9021-1(c). Similarly,  
27 Quotient should upload an order granting the Quotient MTD for  
28 the reasons set forth in this memorandum decision, and file a

1 separate proof of service indicating compliance with B.L.R.  
2 9021-1(c).

3 The court will conduct an adversary proceeding scheduling  
4 conference on December 18, 2020, at 1:30 p.m. via CourtCall.

5 \*\*END OF MEMORANDUM DECISION\*\*  
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COURT SERVICE LIST

All Parties Served Via CM/ECF